

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2505

By Delegates Criss, Heckert and Fehrenbacher

[Introduced January 12, 2023; Referred to the Committee
on Education then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §44A-5-1, §44A-5-2, §44A-5-3, §44A-5-4, and §44A-5-5, all relating to creating
 3 the Supported Decision-Making Act; providing for a legislative purpose; providing for
 4 definitions; laying out the requirements for the petition; creating Independent Educational
 5 Program (IEP) requirements; and providing for transitional planning.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SUPPORTED DECISION- MAKING ACT.

§44A-5-1. Legislative purpose

1 The purpose of this bill is to establish the Supported Decision-Making Act, which
 2 authorizes an adult with a disability to enter into a supported decision-making agreement in which
 3 he or she designates one or more supporters to provide assistance when making decisions or
 4 engaging in certain other activities. An adult who enters into the agreement voluntarily and
 5 understands the nature and effect of the agreement.

§44A-5-2. Definitions.

1 For the purpose of this article:

2 (a) "Adult" means an individual 18 years of age or older.

3 (b) "Coercion" means use of force or threats to persuade someone to do something.

4 (c) "Decision-maker" means an adult who seeks to execute or has executed, a supported-
 5 decision making agreement with one or more supporters under this chapter.

6 (d) "Disability" means, with respect to an individual, a physical or mental impairment that
 7 substantially limit one or more major life activities.

8 (e) "Supported decision-making" means the process of supporting, without impeding the
 9 self-determination of the decision-maker, and accommodating the decision-maker in making life
 10 decisions, including decisions related to where the decision-maker wants to live; the services,
 11 supports, financial decisions, and medical care the decision-maker wants to receive; whom the
 12 decision-maker wants to live with; and where the decision-maker wants to work.

13 (f) "Supported decision-making agreement" is an agreement a decision-maker enters into
14 with one or more supporters under this section to use supported decision-making.

15 (g) "Supporter" means an adult who has entered into a supported decision-making
16 agreement with a decision-maker.

17 (1) A decision-maker may voluntarily, without undue influence or coercion, enter into a
18 supported decision-making agreement with a supporter or supporters. The decision-maker may
19 amend or terminate a supported decision-making agreement at any time.

20 (2) Except as limited by a supported decision-making agreement, a supporter may provide
21 to the decision-maker the following decision-making assistance with the decision-maker's affairs
22 with the consent of the decision-maker.

23 (A) Assisting with making decisions, communicating decisions, and understanding
24 information about options for the responsibilities of, and the consequences of decisions.

25 (B) Accessing, obtaining, and understanding information that is relevant to decisions
26 necessary for the decision-maker to manage his or her affairs, including medical, psychological,
27 financial, and educational information, and medical and other records. The information is kept
28 privileged and confidential, as applicable, and is subject to neither unauthorized access, nor use,
29 nor disclosure.

30 (C) Ascertaining the wishes and decisions of the decision-maker; assisting in
31 communicating those wishes and decisions to other persons; and advocating to ensure their
32 implementation; and

33 (D) Accompanying the decision-maker and participating in discussions with other persons
34 when the decision-maker is making decisions or attempting to obtain information for decisions.

35 (3) A supporter may exercise only the authority granted to the supporter in the supported
36 decision-making agreement.

37 (A) Except as provided in paragraph (2), the supported decision-making agreement
38 extends until terminated by the decision-maker, all supporters, the terms of the agreement, or

39 court order, following notice and an opportunity to be heard, and if the decision-maker is indigent
40 and does not have counsel, the appointment of counsel.

41 (B) If the supported decision-making agreement includes more than one supporter, the
42 agreement shall survive for supporters who have not terminated unless it is terminated by the
43 decision-maker or by all supporters.

44 (C) The supported decision-making agreement is suspended when Adult Protective
45 Services, any mandatory reporter or representative from an authorized agency, or a court of
46 competent jurisdiction finds that the adult with a disability has been abused, neglected, or
47 exploited by a supporter or supporters. The agreement may survive if one or more of the
48 supporters who were not found to have abused, neglected, or exploited the adult with a disability
49 continues to be willing to serve as a supporter and the decision-maker agrees.

50 (4)(A) A supporter is only authorized to assist in the decision-maker accessing, collecting,
51 or obtaining information that is relevant to a decision authorized under the supported decision-
52 making agreement and to which the decision-maker agrees to that the supporter should have
53 access.

54 (B) If a supporter assists the decision-maker in accessing, collecting, or obtaining personal
55 information, including protected health information under the Health Insurance Portability and
56 Accountability Act of 1996 (Pub. L. No. 104-191) or educational records under the Family
57 Educational Rights and Privacy Act of 1974 (20 U.S.C. section 1232g), the supporter shall ensure
58 the information is kept privileged and confidential, as applicable, and is subject to neither
59 unauthorized access, nor use, nor disclosure.

60 (5) The existence of a supported decision-making agreement does not preclude a
61 decision-maker from seeking personal information without the assistance of the supporter.

62 (6) A supported decision-making agreement must be signed voluntarily, without coercion
63 or undue influence, by the decision-maker and the supporter or supporters in the presence of two
64 or more subscribing witnesses who are 18 years of age, and unrelated to the person with the

65 disability, or a notary public.

66 (7) A supported decision-making agreement is valid only if it is in the form of the agreement
67 in the subsection above. The agreement is intended to be personalized by the decision-maker to
68 reflect his or her personal circumstances. The decision-maker should describe in the agreement
69 the type of decision-making assistance he or she would like from his or her supporters.

70 (8) Agreement:

71 **SUPPORTED DECISION-MAKING AGREEMENT.**

72 My name is: _____

73 My address is: _____

74 My phone number is: _____

75 My email address is: _____

76 I want to have people I trust help me make decisions. The people who will help me are
77 called Supporters. I can say what kind of help my Supporters will give me. I am entering into this
78 agreement voluntarily and I understand that:

79 I can talk to an attorney before I sign this agreement.

80 I do not have to sign this agreement.

81 This agreement is because I want supporters to help me make decisions.

82 My supporter cannot make decisions for me.

83 I can end this agreement when I want it to.

84 I can change this agreement when I want to.

85 If I end this agreement or change this agreement, I must let my supporters know about
86 the change. Anyone with a copy of the agreement needs to get a copy of the change in writing.

87 I can change my list of supporters when I want to.

88 My supporter(s) can quit if they want to.

89 If I have more than one Supporter in any area, those Supporters will work jointly
90 (together) unless I note otherwise.

91 My Supporter(s) is not liable for any consequences or decisions I make unless my
 92 Supporter's actions or omissions amount to fraud, misrepresentation, recklessness, or willful or
 93 wanton misconduct.

94 My Supporter(s) are not allowed to make choices for me. To help me with my choices, my
 95 supporters may:

96 Help me find out more about my options and what choices I have by giving me information
 97 in a way I can understand.

98 Help me understand what the choices are so I can make a good decision for me by
 99 discussing both the good things and bad things (pros and cons) that could happen if I make one
 100 decision or another.

101 Help me communicate or tell other people about my decision so the right people know what
 102 I want.

103 This supported decision-making agreement starts right now and will continue until the
 104 agreement is stopped by me or my supporters, or the agreement ends by law.

105 _____
 106 Signature of Decision-Maker Date (Month/Day/Year).

107 APPOINTMENT OF SUPPORTER(S) - SEPARATE FORM FOR EACH SUPPORTER

108 Name: _____

109 Address: _____

110 Phone Number: _____

111 Email address: _____

112 Relationship: _____

113 I want this person to help me with making choices about: (check as many boxes as you
 114 want)

115 Buying or obtaining food and clothing

116 Where I live and whom I live with

- 117 My personal relationships, including friendships, dating, sex, and marriage
- 118 How I spend my time, hobbies, and activities
- 119 My education or training, including what classes I will take and what accommodations I
- 120 will have
- 121 If I work and/or where I work, and what accommodations I will have
- 122 Choosing the level of services and supports and managing the people who work with me
- 123 Hiring a lawyer if I need one and working with the lawyer
- 124 My physical health (if yes, the Healthcare Addendum must be completed)
- 125 My mental health (if yes, the Healthcare Addendum must be completed)
- 126 My financial affairs, like banking and budgeting (if yes, the Finance Addendum must be
- 127 completed)

128 Other: _____

129 I express myself and show what I want in the following ways:

130 Telling people my likes and dislikes.

- 131 Verbally In Writing Using Assistive Technology Demonstrate Other

132 Telling people what I do and do not want to do.

- 133 Verbally In Writing Using Assistive Technology Demonstrate Other

134 Areas I specifically do not want Supporter(s) to assist me with:

- 135 Finances Healthcare Education Relationships

- 136 Employment Legal Matters Daily Living Services/Supports

137 Yes No My Supporter may see my private health information under the Health

138 Insurance Portability and Accountability Act of 1996. This lets my Supporters see my medical
139 records. (If yes, I will provide a signed release form for HIPAA Authorization).

140 Yes No My Supporter may see my educational records under the Family Educational

141 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g). This lets my Supporters see my school

142 information. (If yes, I will provide a signed release form for Authorization to Disclose Educational

143 Information)

144 **CONSENT OF SUPPORTER(S) - SEPARATE FORM FOR EACH SUPPORTER**

145 I, _____, consent to act as _____'s Supporter under this agreement. I

146 understand that my job as a Supporter is to honor and express his/her expressed wishes. My

147 support might include giving this person information in a way he/she can understand; discussing

148 the pros and cons of decisions; and helping this person communicate his/her choice. I know that I

149 may not make decisions for this person. I agree to support this person's decisions to the best of my

150 ability, honestly, and in good faith. In the event I cannot perform my job under this agreement, I will

151 contact the Decision-Maker and/or other team member(s).

152 This agreement must be signed in front of a Notary Public.

153 _____

154 Printed Name of Supporter _____ Printed Name of Witness _____

155 State of West Virginia _____ County of _____

156 This record was acknowledged before me on _____ (date).

157 (Name of Supporter) and

158 Signature of Notary _____

159 Title of Office _____

160 My Commission Expires: _____

161 **SUPPORTED DECISION-MAKING AGREEMENT - HEALTH CARE ADDENDUM**

162 You have the right to make your own health care decisions and the right to decide who

163 helps you make those decisions. If you do not want a person named in this form to help you make

164 health care decisions, you do not have to give them permission to help you with your physical or

165 mental health choices. If you sign this agreement, you still have the right to make the final decision

166 about your health care. Your health care supporter cannot force you to accept health care that you

167 do not want or take away health care that you do want. This agreement does not give my

168 Supporter the authority to make decisions about my health care for me, or to influence me to make

169 decisions that do not reflect my expressed wishes and preferences. My Supporter's consent to
170 providing or withholding treatment is not a substitute for my consent.

171 MY PHYSICAL HEALTH

172 Yes No Help me make appointments with doctors, dentists, therapists, case
173 managers, or other health care providers

174 Yes No Help me keep track of information about my physical health care, including
175 my medical records, and whether I have had recommended medical check-ups, tests, and
176 vaccines

177 Yes No Help me with my physical health care plan, including, but not limited to,
178 taking medications, monitoring blood sugar, administering insulin, and refilling prescriptions

179 Yes No Permission for my supporter to talk to doctors when I am not present or when
180 I am temporarily unable to communicate.

181 MY MENTAL HEALTH

182 Yes No Help me make appointments with doctors, therapists, case managers, or
183 other health care providers

184 Yes No Help me keep track of information about my health care, including my
185 medical records, and whether I have had recommended medical check-ups and tests

186 Yes No Help me with my mental health care plan, including, but not limited to, taking
187 medications, and refilling prescriptions

188 Yes No Permission for my supporter to talk to doctors when I am not present or when
189 I am temporarily unable to communicate.

190 Yes No Permission for my supporter to access psychotherapy notes or other
191 information conversations I have had during mental health counseling, substance use counseling,
192 or group or family therapy.

193 _____

194 Supporter's Signature _____ Date _____

195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220

Decision-Maker's Signature _____ Date _____

SUPPORTED DECISION-MAKING AGREEMENT - FINANCE ADDENDUM

You have the right to make your own finance decisions and the right to decide who helps you make those decisions. If you do not want a person named in this form to help you make finance decisions, you do not have to give them permission to help you with your financial choices. If you sign this agreement, you still have the right to make the final decision about your finances. Your Supporter cannot force you to spend or save your money in a way that you do not want, or manage it in a way that you do not want.

This agreement does not give my Supporter the authority to make decisions about my healthcare for me, or to influence me to make decisions that do not reflect my expressed wishes and preferences. My Supporter's consent to providing or withholding treatment is not a substitute for my consent.

I want to have supporters help me make decisions about how I spend my money and how I save my money.

Consent of Supporters - Financial

I, _____, consent to act as _____'s supporter for financial decisions under this agreement. I agree to provide financial records to the supported decision-making monitor (listed below) monthly/ quarterly/ annually (circle one). I understand that my job as a supporter is to honor and present the wishes of the person with a disability. I understand that my support might include giving this person information in a way he/she can understand; discussing pros and cons of decisions; communicating the person's choice. I know that I may not make decisions for this person. I agree to support this person's decisions to the best of my ability, honestly, and in good faith.

Supporter's Signature _____ Date _____

221 Consent of Monitor - A monitor must be appointed to oversee financial supporters.

222

223 I, _____, consent to act as a Monitor for financial decisions under this agreement.

224 I agree to review the financial records of the person with a disability when provided by the

225 supporters every month. I agree to make reasonable efforts to ensure that the supporters under

226 this agreement are acting honestly, in good faith, and in accordance with the choices of the person

227 with a disability. If I suspect financial abuse, misuse of funds, bad faith, or failure to comply with the

228 decisions of the person with a disability, I will require the supporters to explain their actions. If the

229 supporter fails to provide this information or if I continue to have reason to believe that the

230 supporter is abusing or failing to comply with the wishes of the person with a disability, I

231 will promptly inform Adult Protective Services.

232



233 Monitor's Signature

Date

234 MEETING AND TIMELINE CONSIDERATIONS

235 My support people are very important to me and I want to be respectful of their time. I know

236 that I can call them to ask questions about my goals in this agreement at any time, but I would like

237 to talk with my whole Supported Decision Making team:

238 Check one:

239 Every week

240 One time a month

241 Two times a month

242 Every Six Months

243 One time a year

244 Before an important meeting (IEP/Doctor/Dentist)

245 I do not want my support team to meet on a regular basis

246 There will be times that I need to discuss certain topics in more detail and it won't be

247 necessary to call the entire team together. Here is what I would like to do for specific Supporters:

248 MEETING TOPIC:

249 Finances How Often? In Person? By Phone? By Video?

250 Health care How Often? In Person? By Phone? By Video?

251 Education How Often? In Person? By Phone? By Video?

252 Relationships How Often? In Person? By Phone? By Video?

253 Legal Matters How Often? In Person? By Phone? By Video?

254 Daily Living How Often? In Person? By Phone? By Video?

255 Services/Supports How Often? In Person? By Phone? By Video?

256 Other How Often? In Person? By Phone? By Video?

257 ADDITIONAL DOCUMENTATION OR ATTACHMENTS

258 I understand that certain documents may give my Supporters more authority in my life or

259 access to my personal information. I am including those documents as part of this agreement:

260 Authorization for Release of Records

261 Health Insurance Portability and Accountability Act (HIPAA) Release

262 Family Educational Rights and Privacy Act (FERPA) Release

263 Other Release

264 Letters of Guardianship [Temporary/ Permanent]

265 Guardianship of the Person and Estate

266 Guardianship of the Person

267 Guardianship of the Estate

268 Power of Attorney

269 General

270 Financial

271 Medical

272 Durable Power of Attorney

- 273 General
- 274 Financial
- 275 Medical
- 276 Protective Order
- 277 Educational Surrogate Authorization
- 278 Trust Documents
- 279 Health Care Representative Authorization
- 280 Psychiatric Advanced Directive
- 281 Representative Payee Authorization
- 282 WVABLE Documentation
- 283 Living Will

284 Other: _____

285 WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

286 If a person who receives a copy of this agreement or is aware of the existence of this
 287 agreement has cause to believe that the adult with a disability is being abused, neglected, or
 288 exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation to the
 289 WV Bureau for Children and Families by calling the Centralized Intake for Abuse and Neglect
 290 Hotline at 1-800-352-6513 or online at [https://dhhr.wv.gov/bcf/Services/Pages/Centralized-Intake-](https://dhhr.wv.gov/bcf/Services/Pages/Centralized-Intake-for-Abuse-and-Neglect)
 291 for-Abuse-and-Neglect.

292 DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT

293 A person who receives the original or a copy of a Supported Decision-Making agreement
 294 shall rely on the agreement. A person is not subject to criminal or civil liability and has not engaged
 295 in professional misconduct for an act or omission of the act or omission is done in good faith and in
 296 reliance on a Supported Decision-Making agreement.

297 REMINDER

298 This agreement should be reviewed by all parties to the agreement, and this agreement must be

299 read out loud or otherwise communicated to all parties to the agreement in the presence of a
 300 notary. The form of communication shall be appropriate to the needs and preferences of each
 301 party, including each individual's language and sensory processing wants or needs. Each
 302 Supporter will acknowledge by signature his/her/their role as determined by the Decision-Maker.

303 This agreement must be signed in front of a Notary Public.

304 I have reviewed, agree with, and understand all the information contained in this
 305 Supported Decision- Making Agreement.

306 I understand that this agreement may be revoked by me or by my supporter(s) at any time.

307 _____

308 Printed Name of Decision-Maker _____ Printed Name of Witness

309 State of West Virginia _____ County of _____

310 This record was acknowledged before me on _____ (date)

311 By _____

312 (Name of Decision-Maker) and

313 By _____

314 (Name of Witness)

315 [SEAL}

316 _____

317 Signature of Notary

318 My Commission Expires: _____

319 The text of this agreement was communicated to the person with a disability in my
 320 presence by:

321 Reading the full agreement aloud

322 Otherwise communicating the agreement to the person with a disability (describe
 323 communication used):

324 (9) A supported decision-making agreement may be in any form not inconsistent with the

325 first subsection of this article and the other requirements of this chapter.

326 (10)(A) A person who receives the original or copy of a supported decision-making
327 agreement shall rely on the agreement and recognize a decision or request made or
328 communicated with the decision-making assistance of a supporter under this chapter as the
329 decision or request of the decision-maker.

330 (B) A person who, in good faith, acts in reliance on an authorization in a supported
331 decision-making agreement is not subject to civil or criminal liability or to discipline for
332 unprofessional conduct for relying on a decision made in accordance with a supported decision-
333 making agreement.

334 (C) Execution of a supported decision-making agreement may not be a condition of
335 participation in any activity, service, or program.

336 (11) If a person who receives a copy of a supported decision-making agreement or is
337 aware of the existence of a supported decision-making agreement or is aware of the existence of a
338 supported decision-making agreement has cause to believe that the decision-maker is being
339 abused, neglected, or exploited by the supporter, the person shall report the alleged abuse,
340 neglect, or exploitation to the WV Department of Health and Human Resources Adult Protective
341 Services.

§44A-5-3. Requirements of petition.

1 The petition for guardianship must state:

2 (a) Whether alternatives to guardianship and available supports and services to avoid
3 guardianship, including a supported decision-making agreement, were considered; and

4 (b) Whether any alternatives to guardianship and supports and services are feasible and
5 would avoid the need for guardianship.

§44A-5-4. Individual Education Program (IEP) requirements.

1 For any student for whom adult guardianship is being considered at the Individual
2 Educational Program (IEP) team meeting, the IEP team shall inform the student and family (or

3 guardian if there is a guardian of the minor) at the earliest possible meeting of the availability of
4 supported decision-making as an alternative to guardianship. The IEP team shall assist the child
5 and his or her family or minor guardian in locating resources to assist in establishing a supported
6 decision-making plan if the child and family are interested in supported decision-making. If a
7 supported decision-making agreement is executed, the IEP team shall abide by decisions made
8 by the student pursuant to the supported decision-making agreement.

§44A-5-5. Transitional planning.

1 The West Virginia Department of Education shall promulgate a regulation that requires
2 school districts and charter schools to be part of the transitional planning process to inform
3 students and families of the availability of supported decision-making as an alternative to
4 guardianship in such cases where adult guardianship is being contemplated.

NOTE: The purpose of this bill is to create the Supported Decision-Making Act. The bill provides for a legislative purpose. The bill provides for definitions. The bill lays out the requirements for the petition. The bill creates Independent Educational Program (IEP) requirements. Finally, the bill provides for transitional planning.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.